

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

MICHAEL J. MIDDLETON,

Plaintiff,

vs.

EVELYN B. KERN,

Defendant,

2:10-cv-1887-PMP-RJJ

REPORT & RECOMMENDATION
OF UNITED STATES
MAGISTRATE JUDGE

This matter is before the Court on an Application to Proceed in District Court Without Prepaying Fees or Costs (#1) and the proposed complaint attached thereto as Attachment (#1).

The Court has reviewed the Application (#1) and the proposed complaint and canvassed Plaintiff, Michael J. Middleton at a status hearing and finds that this case has been filed in the wrong court. After being advised that this case is in the wrong court, Plaintiff advised the court that he will pursue this action in state court.

RECOMMENDATION

Based on the foregoing and good cause appearing therefore,

IT IS THE RECOMMENDATION of the undersigned Magistrate Judge that this case be **DISMISSED WITH PREJUDICE.**

NOTICE

Pursuant to Local Rule IB 3-2 [former LR 510-2] any objection to this Report and Recommendation must be in writing and filed with the Clerk of the Court within ten (10) days after service of this Notice. The Supreme Court has held that the courts of appeal may

1 determine that an appeal has been waived due to the failure to file objections within the
2 specified time. Thomas v. Arn, 474 U.S. 140 (1985), reh'g denied, 474 U.S. 1111 (1986). This
3 Circuit has also held that (1) failure to file objections within the specified time and (2) failure to
4 properly address and brief the objectionable issues waives the right to appeal the District Court's
5 order and/or appeal factual issues from the order of the District Court. Martinez v. Ylst, 951
6 F.2d 1153 (9th Cir. 1991); Britt v. Simi Valley United Sch. Dist., 708 F.2d 452, 454 (9th Cir.
7 1983).

8 DATED this 6th day of January, 2011.

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11 ROBERT J. JOHNSTON
United States Magistrate Judge
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